

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re:

SUNSHINE NURSING HOME, INC.,  
DEBTOR

Chapter 7  
Case No. 99-44612-JBR

**ORDER**

On April 29, 2005 this Court entered an Order [Docket # 97] determining that the accountant's fees and expenses of William D. Gady, CPA, were to be treated as a Chapter 11 expense and paid in accordance with that priority. It was subsequently brought to the Court's attention for the first time that arguably Mr. Gady's fee and expense claim was payable out of a specific pool of funds.<sup>1</sup> The Court vacated its April 29, 2005 Order of Clarification [Docket # 109], reiterating that his fees and expenses were a Chapter 11 administrative claim, and scheduled a show cause hearing on the Accountant's Motion for Payment [Docket # 103]. This matter is further complicated by the allowance of a prior motion of the Chapter 7 Trustee to settle matters with another chapter 7 trustee in another case [Docket # 89], and the Chapter 7 Trustee's payment made pursuant to said Order. The trustee in the other case was notified of this Court's show cause order and appeared at a hearing on June 29, 2005. The Chapter 7 Trustee in this case also appeared.

The Application to Approve Employment of Accountant was filed in August of 1999. It provided, in part:

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<sup>1</sup> The accountant was employed pursuant to a Motion and Order entered in a Chapter 11 in 1999. His application for compensation was filed in 2003, but never was heard. The case was converted to a Chapter 7 in 2005.

“12. The Accountant is only willing to render services to the Debtor if it is compensated first from any sums derived through the Debtor’s claims pending with the Rate Setting Commission and the Decision of Administrative Law Appeals of the Commonwealth of Massachusetts.”

The Proposed Order submitted with the Application contained substantially identical language.

Judge Queenan, on September 21, 1999, endorsed the Application as follows:

“Application to employ is allowed. Compensation is subject to further order of the Court pursuant to the filing of an application for compensation.”

There is no dispute that the estate received about \$36,000.00 through the Rate Setting Commission and/or the Division of Administrative Appeals. Pursuant to a Stipulation, the Chapter 7 estate split those proceeds equally with the estate of Frontier Group of Massachusetts, Inc. [Docket # 89].

The trustee of Frontier takes no position on the interpretation of Judge Queenan’s Order. The Chapter 7 Trustee of the Debtor acknowledges that he did not know about the language of the Application and Proposed Order but argues that since Judge Queenan’s Order did not specifically identify the Rate Setting Commission/Division of Administrative Appeals proceeds as the source of payment of the accountant, and since Judge Queenan required a fee application to be filed, he could not have meant that the subject pool of funds was specifically available for the accountant.

This Court is unconvinced. 11 U.S.C. § 328 authorizes the employment of a professional “on any reasonable terms.” There is no suggestion in this case that payment of the accountant out of the funds in question was or is an unreasonable term. I find that the clear and unambiguous meaning of “Application to employ is allowed” encompasses all terms proposed in

the Application. The Trustee's argument that Judge Queenan's Order requiring a fee application is inconsistent with the payment from a dedicated pool is without merit. If the application had sought some fee arrangement based on a contingency, the Trustee's argument would be a powerful one. Judge Queenan's requirement of a fee application is consistent with the dedicated pool as well as 11 U.S.C. § 330.

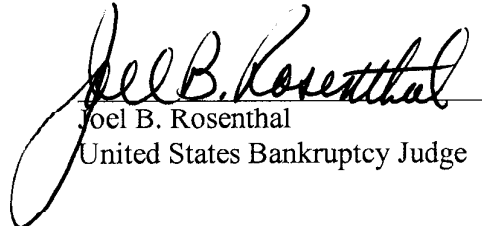
The Court finds and orders:

(1) The reasonable fees and expenses of William D. Gady CPA and the firm of Landa & Altscher, P.C. are allowed in the amount of \$4,000.00 for fees and \$15.00 for expenses. Deductions have been made for the following reasons: (a) rates charged are higher than sought in the Application. Although the application provides for "periodic adjustments" to rates, the Court notes that no such adjustment is described in the Accountants' application; (b) lack of sufficient detail or description of services, particularly the services provided on December 9, 2000 by McKenna "09-Dec-00 McKenna settlement proposal 19.50 (hours)."

(2) That Charles Glerum, trustee of Frontier Group of Massachusetts, Inc., shall reimburse Joseph Baldiga, Trustee herein, the sum of \$2,007.50, representing 50% of the fees and expenses allowed herein, which should have been deducted from the gross proceeds received before splitting the remainder pursuant to the Stipulation [Docket # 89].

Dated: July 5, 2005

By the Court,

  
Joel B. Rosenthal  
United States Bankruptcy Judge